A.F.R.

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL DEATH REFERENCE NO. 1/2001

(Made by the Additional Sessions Judge, Jashpur Nagar, Raigarh under section 366 of the Code of Criminal Procedure)

CRIMINAL APPEAL NO. 158 OF 2001

APPELLANT : Ram Singh S/o Dharam Sai Nagvanshi, Aged about 37 years, R/o Village-Gaja, P.S. Pathalgaon, Tahsil- Pathalgaon, District-Jashpurnagar (C.G.).

-Versus-

RESPONDENT : State of Chhattisgarh, through P.S. Pathalgaon, Tahsil-Pathalgaon, District- Jashpurnagar (C.G.).

JUDGMENT for Consideration.

Sd/-
L.C.BHADOO
Judge

15th July, 2003.

HON'BLE THE CHIEF JUSTICE.

I agree.

Sd/-
Chief Justice

POST FOR JUDGMENT ON 24th July, 2003.

Sd/-
L.C.BHADOO
Judge

23rd July, 2003

A.F.R

(C2)

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RESPONDENT : State of Chhattisgarh, through P.S. Pathalgaon, Tahsil-Pathalgaon, District- Jashpurnagar (C.G.).

Appellant by Shri Shailendra Dubey, Advocate.

State by Shri P. S. Koshy, Govt. Advocate.

DB: HON'BLE MR. JUSTICE K.H.N.KURANGA, C.J.
& HON'BLE MR. JUSTICE L. C. BHADOO, J.

JUDGMENT

(24th July, 2003)

By Justice L. C. Bhadoo.

1. The accused/appellant Ram Singh was tried by the Additional Sessions Judge, Jashpur Nagar in Sessions Trial No. 196 of 1999 for the commission of the offences punishable under sections 302 and 307 of the Indian Penal Code for committing the murders of Shani Ram and Mayaram and for attempting to commit the murder of Sukhri Bai. The learned Additional Sessions Judge by his judgment dated 9th January 2001 after holding the accused guilty of the offences under Sections 302 and 307 I.P.C. sentenced him to death and pay a fine of Rs. 10,000/-, in

default of payment of fine to further undergo simple imprisonment for five years for the offence under section 302 I.P.C. and to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/-, in default of payment of fine to further undergo simple imprisonment for 2½ years for the offence under Section 307 I.P.C.

2. Criminal Appeal No. 158 of 2001 has been filed by the accused-appellant against the said conviction and sentences passed against him by the Additional Sessions Judge. On the other hand, the learned Additional Sessions Judge has made Criminal Reference No. 1 of 2001 to this Court for confirmation of the death sentence imposed by him on the accused.

3. This judgment shall dispose of the aforesaid Appeal filed by the accused and the Reference made by the learned Additional Sessions Judge.

4. The relevant prosecution story in brief is that on 8th September, 1999 in between 11.30 a.m. to 13.30 p.m. in village-Gala the accused Ram Singh committed the murder of Shani Ram @ Abir Sai in his house and also committed the murder of Maya Ram in the house of Maya Ram assaulting them with a tangia. He also assaulted Sukhri Bai, mother of Sanjhu Ram with tangia with intention to commit her murder. The deceased Mayaram was maternal uncle of Sanjhu Ram (P.W.2) and deceased Abir Sai was uncle of Sanjhu Ram and injured Sukhri Bai (P.W.3) is mother of Sanjhu Ram. One revenue case was pending between Sanjhu Ram and accused Ram Singh in the Court

of the Tehsildar, Pathalgaon. P.W.2 Sanjhu Ram and accused Ram Singh are the sons of Dharam Sai who married two ladies. Sukhri Bai is the mother of Sanjhu Ram (P.W.2) and the other wife of Dharam Sai is the mother of accused Ram Singh.

5. On 8.9.1999 Sanjhu Ram (P.W.2) reported the matter to the police station Pathalgaon that he and accused Ram Singh are stepbrothers. Accused Ram Singh is son of the first wife of Dharam Sai and he is the son of the second wife namely Sukhri Bai. After the death of their father, Ram Singh got mutated the whole agricultural land in his name and only 50 decimal land was given to Sanjhu Ram. Therefore, Sanjhu Ram filed a case in the Court of Tehsildar Pathalgaon for partition of the land and on account of that some dispute was going on between the accused Ram Singh and complainant Sanjhu Ram. On 8th September 1999 at about 11 a.m. accused Ram Singh invited Shani Ram @ Abir Sai, uncle of Sanjhu Ram, to his residence for a lunch and during the lunch the accused and Shani Ram started discussing about the dispute between Sanjhu Ram and Ram Singh. During that discussion accused Ram Singh said that you are taking the side of Sanjhu Ram and assaulted Shani Ram 3-4 times by tangia and murdered him. Thereafter accused Ram Singh started from his house in search of Sanjhu Ram but at that time he was not present at his house. However, the mother of Sanjhu Ram namely Sukhri Bai was present in the house. The accused assaulted Sukhri Bai by tangia on her head, neck, shoulder and near the ear.

On receiving these injuries she fell down in the dalan. The accused left Sukhri Bai thinking that she was dead. When Purno Ram (P.W.5) tried to intervene and asked the accused not to assault Sukhri Bai the accused tried to assault him also. After assaulting Sukhri Bai the accused went to the agricultural field in search of Sanjhu Ram. The accused was carrying the tangia in his hand. Sanjhu Ram was fencing his field. The accused reached there and started abusing Sanjhu Ram saying that he has already murdered one person and he will also kill Sanjhu Ram. On seeing this conduct of the accused, Sanjhu Ram started running and entered the house of Mayaram. At that time Maya Ram was taking his meals, Sanjhu Ram narrated the story to Mayaram. He asked Sanjhu Ram to hide himself in the room (Pateva). Sanjhu Ram climbed on to the Pateva and hid himself in the Pateva (a space in the room meant for keeping the house hold goods) and the son of Mayaram and daughter in law (P.W.4) Tija Bai closed the door of the house. After 15 to 20 minutes the accused Ram Singh reached the house of Maya Ram and he started banging the door. He ultimately broke open the door and enquired about Sanjhu Ram from Maya Ram. When Maya Ram replied that Sanjhu Ram had not come here, the accused blamed Maya Ram that he is taking the side of Sanjhu Ram and dragged him to the courtyard and assaulted 7-8 times with tangia on his head and legs. Maya Ram succumbed to the injuries sustained by him on the spot. Thereafter the accused ran away to his in-laws villagc-Bhukkcdpur.

6. Sanjhu Ram came down from Pateva. When he was in the pateva he heard all the conversation of Maya Ram and the accused Ram Singh. Thereafter Sanjhu Ram went to his house where he saw his injured mother. He took village Kotwar and reached the house of the accused where they saw the dead body of Shani Ram. Thereafter they went to the police station and lodged the first information report Ex.P/3, gave merg intimation about Shani Ram (Ex.P/4) and also gave merg intimation about Maya Ram (Ex.P/17). The police registered the case and during investigation the accused Ram Singh gave information under section 27 of the Evidence Act (Ex.P/6) and pursuant to that information the weapon of offence i.e. tangia was recovered at the instance of the accused from the bush in the garden of one Karan Master. After completion of the investigation the police filed challan against the accused/appellant in the Court of C.J.M. Jashpur Nagar who in turn committed the case to the Court of Sessions Judge Raigarh from where the case was received on transfer in the Court of Additional Sessions Judge Jashpur Nagar.

7. Sukhri Bai was admitted to the hospital on 8th September and remained in the hospital up to 29th September.

8. Learned Additional Sessions Judge framed the charges against the accused/appellant for commission of the offence punishable under section 302 and 307 of the Indian Penal Code. The accused denied the charge and claimed to be tried. The prosecution in order to prove the offences against the accused/appellant examined in all 11 witnesses. The

statement of the accused was recorded under section 313 of the Cr.P.C. in which he has denied the evidence of the prosecution witnesses and stated that he had not murdered anyone. He further stated that Sanjhu Ram was doing leadership in the matter of his agriculture field, he is a blind person when he was grazing the cattle in the field, the police caught him. He further stated that he had not said anything to Sanjhu Ram or Baijnanth Singh. However, he admitted that Sanjhu Ram had filed a case in the Court of Tehsildar against him. He is not even able to walk therefore how he could chase Sanjhu Ram to commit his murder. He has not murdered Maya Ram and he does not know how he died. He has further stated that his lungi and tangia were seized in the police station. The tangia was not seized from him.

9. After hearing the arguments of the learned Additional Public Prosecutor and learned counsel for the accused/appellant and after believing the evidence of the prosecution, the learned Additional Sessions Judge convicted and sentenced the accused/appellant for the commission of offences under section 302 and 307 I.P.C. as aforesaid.

10. We have heard Shri Shailendra Dubey, learned counsel for the accused/appellant and Shri P.S.Koshy, learned Govt. Advocate for the State.

11. As far as the nature of death of Shani Ram and Maya Ram as homicidal is concerned the learned counsel for the accused/appellant has not disputed this fact. Dr. Smt. Anita Minj (P.W.11) has stated that on 9.9.1999 she conducted the postmortem on the body of Abir Sai. On

examination following injuries were found on the body of Shani Ram:-

(i) Incised wound on right side of the occipital region in the size of 6x3x4 c.m.

(ii) Incised wound on the left side of the occipital region in the size of 4x3x3 c.m.

(iii) Incised wound on the left side of the occipital region.

(iv) Contusion on the supraorbital region in the size of 4x3x0.4 c.m.

Hairs of the head were drenched with blood and clotted blood was present in the nostrils of the deceased. On opening the head it was found that the bone of the occipital region and frontal region were fractured and the brain was crushed. Haematoma was present in the size of 5x4x3 c.m. The injuries were ante mortem in nature and Abir Sai died on account of shock and excessive bleeding. In the opinion of the doctor the nature of death was homicidal.

12. Dr. Smt. Anita Minj (P.W.11) has further stated that on 9.9.1999 she also conducted the postmortem on the body of Maya Ram. The following injuries were found on the body of Maya Ram:-

(i) Incised wound on right parietal region on the head in the size of 4 x 1.5 c.m. bone deep.

(ii) Incised wound on vertex region in the size of 2x1 c.m. bone deep.

(iii) Incisced wound on the left occipital region in the size of 4x3 c.m. bone deep and the bone was fractured.

(iv) Incised wound on the left side of the jaw in the size of 4.5x1x1/2 c.m.

(v) Incised wound on the left side of the mouth in the size of 1.5x1/2 x1/2 c.m.

(vi) Incised wound on right side of the occipital region in the size of 4x3x3 c.m.

All the injuries were caused by hard and sharp edged weapon. The margins were clear-cut and the injuries were ante mortem. On opening of the head it was found that the skull was fractured, both right and left occipital region bones were fractured and Haematoma of the size of 4x3x3 was present. The cause of death was due to excessive bleeding and on account of the injuries on the head which were homicidal in nature. Her report is Ex.P/25.

13. Dr. Smt. Anita Minj (P.W.11) has further stated that on 8.9.1999 at about 7.45 she examined Sukhri Bai. Following injuries were found on the body of Sukhri Bai :-

(i) Inciscd wound 3x1x1/2 c.m. on left occipital region, the margins were clear-cut, the injury was bone deep.

(ii) Incised wound in the size of 3x1x1/2 c.m. on the occipital region.

(iii) Incised wound in the size of 2.5x1/2x1/2 c.m. on the backsidc of thc neck at the right side.

(iv) Incised wound 4x1x1/2 c.m. on the left tempo facial region.

(v) Incised wound 1x1/2 c.m. on the shoulder and blood was oozing out of the injuries.

The patient was conscious; the injuries were caused by sharp and the hard object. Her report is Ex.P/26. The injuries of Sukhri Bai were dangerous and these injuries could have been fatal to the life of Sukhri Bai. The report of the doctor is Ex.P/27. Sukri Bai remained in the hospital for 21 days and the report is Ex.P/28.

14. On enquiry by the Police Station Pathalgaon Dr. Smt. Anita Minj (P.W.11) gave the report Ex.P/29 that all the injuries of Shani Ram, Maya Ram and Sukhri Bai could be caused by tangia.

15. In view of the above evidence of the doctor and the eyewitnesses namely Tija Bai (P.W.4), Purnoram (P.W.5) and Sukhri Bai (P.W.3) and also the evidence of Sanjhu Ram (P.W.2) it is clear that the two deceased persons died homicidal deaths and Sukhri Bai sustained injuries in the incident in question. Therefore it stands proved that the nature of the death of Shani Ram and Maya Ram was homicidal and the accused assaulted Sukhri Bai (P.W.3) by tangia with intention to cause hear death. Dr. Smt. Anita Minj has stated that the injuries on the body of Sukhri Bai were dangerous to life. Therefore the attack on the Sukhri Bai falls within the ambit of offence under section 307 of the I.P.C. i.e. attempt to murder.

16. Coming to the question of the involvement of the accused/appellant in committing murder of Shani Ram @ Abir Sai, Maya Ram and assaulting Sukhri Bai is concerned we have to examine the prosecution evidence.

17. As far as the question of murder of Maya Ram is concerned Sanjhu Ram (P.W.2) has deposed that when he was working in the agricultural field on the fateful day, the accused came there with a tangia in his hand. While sharpening the blade of tangia by a stone he said that he has already murdered one person and if he (Sanjhu Ram) ploughs the field he would kill him. Thereafter this witness ran away and reached the house of Maya Ram, his maternal uncle, and hid himself in the pateva of the house. The accused Ram Singh followed him, broke opened the door of the house of Maya Ram by tangia and started cnquiring from Mayaram

about Sanjhu Ram. When Mayaram replied that Sanjhu Ram has not come there and then the accused Ram Singh said that he (Mayaram) was taking the side of Sanjhu Ram. Therefore, he dragged Mayaram to the courtyard of the house and assaulted him by tangia 7-8 times on various parts of the body. As per the evidence of Sanjhu Ram he heard all the conversation between Maya Ram and Ram Singh while he was hiding himself in the Pateva.

18. Tija Bai (P.W.4) who is grand daughter in law of the deceased Maya Ram and who was present at the time of the incident has clearly stated in her evidence that at about 1.30 p.m. in the day she was serving food to Maya Ram and Dhana Ram, at that time Sanjhu came and said that Ram Singh is chasing him to kill him. Sanjhu Ram hid himself in the pateva and thereafter Ram Singh came, and banged the door of the house by a tangia, broke opened the door, entered the house, and dragged Maya Ram saying that "you people are involving me in the litigation". On this Maya Ram said 'listen to me' but the accused Ram Singh assaulted Maya Ram with tangia on his head. When the accused inflicted the second injury by tangia on Maya Ram, she (the witness) ran away to the house of Drupad and informed him that Ram Singh is assaulting her grant father-in-law. When she returned along with two persons she saw that Maya Ram was lying dead. She is the eyewitness to the incident and in the cross-examination learned counsel for the accused could not shake her evidence. Her evidence on the point of assault on Mayaram by the accused-appellant is

corroborated by the evidence of Sanjhu Ram (P.W.2) who has stated that he heard the conversation between Mayaram and the accused/appellant. These witnesses have not been cross-examined on this point. But the cross-examination was only regarding unsoundness of the mind of the accused at the time of committing the crime. Therefore, in view of the evidence of Tija Bai (P.W.4) and Sanjhu Ram (P.W.2) it stands proved that the accused Ram Singh assaulted the deceased Maya Ram and committed his murder.

19. As far as the involvement of the accused in assaulting Sukhri Bai is concerned, Sukhri Bai (P.W.3) has deposed that at about 12.00 noon she was standing in her house, the accused came and assaulted her by tangia on her head, she became unconscious. She received injuries on her head, parietal regions and shoulders. She does not know why the accused assaulted her. This witness has not been cross-examined by the counsel for the accused with regard to the assault on her by the accused. She was cross-examined regarding unsoundness of the accused and about their relations with the accused.

20. Purnoram (P.W.5) has stated that he was at his residence and at the relevant time when he was returning from the house of Ghanshyam he heard the voice of Sukhri Bai who was crying to save her as Ram Singh was assaulting her. On hearing the cries, he reached the spot and saw that there was a tangia in the hand of Ram Singh and he assaulted Sukhri Bai who fell down. When he asked Ram Singh why he has done so in the courtyard of his house, the accused

ran away. Thereafter he offered water to Sukhri Bai. She had received injuries on her head and she became unconscious. This witness also has not been cross-examined on the aspect of the assault, but cross-examined only on the aspect of unsound mind of the accused.

21. Sibboram (P.W.6) has also deposed that on the fateful day at the relevant time he had gone to the kerosene shop where wife of Sanjhu Ram came and informed that Ram Singh is assaulting Sukri Bai. On hearing this he went to the site and saw that Sukhri Bai was lying unconscious in her house. Then he went to call Sanjhu Ram at Maya Ram's house. When he reached Maya Ram's house, he saw the dead body of Maya Ram. Sanjhu Ram was hiding himself in Pateva. He enquired from Sanjhu Ram as to who has murdered Maya Ram. Sanjhu Ram replied that Ram Singh has committed the murder. In view of the statements of Sukhri Bai (P.W.3), Purnoram (P.W.5) and Sibbo Ram (P.W.6) it is proved that accused Ram Singh assaulted Sukhri Bai.

22. Learned counsel for the accused has not cross-examined the above witnesses regarding the involvement of the accused in assaulting Maya Ram and Sukhri Bai. The witnesses have been cross-examined only on the point whether at the time of committing the crime the accused was of unsound mind.

23. Now coming to the question of involvement of the accused Ram Singh in committing the murder of Shani Ram @ Abir Sai, there is no direct evidence on this point and the whole case rests on the circumstantial evidence. The law on the

point is that in a case based on the circumstantial evidence the Court can record conviction but it must satisfy itself that the circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

24. In order to prove the involvement of the accused in committing the murder of Shani Ram, the prosecution has tried to prove this fact by adducing the evidence regarding the following circumstances:-

(i) Motive behind the crime.

(ii) The dead body of Shani Ram @ Abir Sai was found in the house of the accused Ram Singh and no explanation has been offered by the accused regarding that.

(iii) The statement of the accused before Sanjhu Ram (P.W.2) that he has already murdered one person, and before Baijnath Singh (P.W.1) that he has already murdered three persons.

(iv) Recovery of the weapon of offence i.e. Tangia on the information given by the accused under section 27 of the Indian Evidence Act vide Ex.P/6, the recovery of the axe vide Ex.P/7, and the report (Ex.P/23) of the forensic science laboratory to the effect that the tangia was found stained with blood.

25. As far as circumstance No. (i) is concerned, it has come in the evidence, which has not been disputed by the counsel for the accused, that Sanjhu Ram and accused Ram Singh

are stepbrothers, i.e. their father Dharmsai married two ladies; one wife namely Sukhri Bai (P.W.3) is the mother of Sanjhu Ram (P.W.2) and the other wife is the mother of Ram Singh (accused). The accused Ram Singh got whole agricultural land mutated in his name and for that reason Sanjhu Ram filed a case in the Court of Tehsildar which is pending and on account of that case accused Ram Singh was disturbed and he was having animosity against Sanjhu Ram and that is why on the fateful day the accused Ram Singh was searching Sanjhu Ram to commit his murder. He reached the field where Sanjhu Ram was working and he chased him for committing his murder and ultimately he reached the house of Maya Ram and committed the murder of Maya Ram. Deceased Shani Ram was the uncle of Sanjhu Ram, the accused was under the impression that Shani Ram and Maya Ram were taking the side of Sanjhu Ram therefore he assaulted both of them and committed their murder. He went in search of Sanjhu Ram at his residence where Sanjhu Ram was not present; therefore, he assaulted Sukhri Bai. Thus the prosecution has been able to prove the motive behind the crime in question.

26. So far as the second circumstance is concerned, Balveer Singh Rajput (P.W.10) Inspector has stated that after registering the case he reached the village-Gala along with staff, and prepared panchnama of the body of Shani Ram and Maya Ram. Panchnama of the dead body of Shani Ram is P/1, which bears his signature from 'c' to 'c'. He prepared the site plan of both the places. Ex.P/19 is the site plan of

the house of Ram Singh where dead body of Shani Ram was lying; it bears his signature from 'A' to 'A'. He seized the soil from the place of incident and blood stained soil from the place of occurrence where the dead body was found and he prepared seizure memo Ex.P/10. In the panchnama Ex.P/1 it has been mentioned that the body was found in the house of the accused Ram Singh and this fact has not been disputed by the counsel for the accused. The accused has not explained as to how the body of Shani Ram was found in his house. He simply stated that he has not committed the murder of Shani Ram.

27. Sanjhu Ram (P.W.2) has stated that when he was working in the field, the accused came with a tangia in his hand, which was stained with blood, and accused said that Sanjhu Ram is working on this agriculture land, he (the accused) has already murdered one person, and now he would kill him. Even though the accused had not taken the name of Shani Ram as the person whom he has murdered but this statement of the accused has to be read in the context and in the circumstances in which it was used by him, and if it is accordingly read, it referred to the murder of Shaniram only. Baijnath Singh (P.W.1) who is an independent witness has stated that at about 1 to 2 p.m. in the afternoon when he was at his house the accused came to his house and was hurling abuses saying, "where is Sarpanch and Netaji, call them, I have murdered three persons, I will kill these two also". At that time the clothes and face of the accused Ram Singh were stained with blood

and there was one tangia in his hand, which was also stained with blood. On this point also this witness and Sanjhu Ram have not been cross-examined by the counsel for the accused. Looking to the facts and the evidence of these witnesses it is clear that the statement of Ram Singh referred to the murder of Maya Ram, Shani Ram and Sukri Bai because blood was present on his hands, clothes and axe and at that time he had already assaulted three persons. Therefore the irresistible inference can be drawn that his statement referred to the murder of Shani Ram also.

28. Balveer Singh Rajput (P.W.10) has stated that when the accused was in police custody on 9.9.1999 he gave the memorandum Ex.P/6 and informed that he has put the weapon of offence i.e. tangia behind the bush near the garden of Karan Master and pursuant to the information given by the accused the weapon was got recovered vide Ex.P/7. Vijay Singh (P.W.7) and Pyarelal Rathia (P.W.8) have proved that the information (Ex.P/6) was given by Ram Singh and vide Ex.P/7 the tangia was recovered from the place of which the accused gave the information. In view of these evidence it is proved that the weapon of offence i.e. tangia was recovered at the instance of the accused. As per the F.S.L. report Ex.P/23 the tangia was found stained with blood.

29. In view of the above circumstantial evidence it is proved that the accused/appellant Ram Singh assaulted and murdered Shani Ram as Shani Ram being uncle of Sanjhu Ram

(P.W.2) was taking the side of Sanjhu Ram in the dispute between the accused and Sanjhu Ram.

30. The learned counsel for the accused/appellant has argued that at the time of commission of offence i.e. on 8.9.1999 the accused/appellant was of unsound mind, therefore, the accused cannot be held guilty of the offence punishable under section 302 and 307 of the I.P.C. and the trial Court has not given its finding on this point and as such, the judgment of conviction and sentence should be set aside and the case be remanded to the trial Court. In this connection Section 84 of the I.P.C. provides that "nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law". In order to bring the case of the accused under the exception under section 84 of I.P.C. the burden is on the accused that he should prove this fact by leading evidence, by cross-examination of the witnesses and producing the evidence to that effect before the Court. Most of the witnesses have been cross-examined on this point but almost every witness has stated that it is incorrect to say that before committing the crime or on the date of commission of the crime the accused was of unsound mind or he was acting like a man of unsound mind. Even before starting of the trial learned Additional Sessions Judge had sent the accused to the Central Jail Jabalpur for getting him examined from the Medical College Jabalpur about his unsoundness of mind and the order

sheet dated 8th February, 2000 shows that the medical college Jabalpur opined that the accused was mentally sound and thereafter the trial was started. No record regarding his treatment for unsoundness of mind has been produced nor any other oral or documentary evidence has been produced which shows that on the date of commission of the crime the accused was of unsound mind. In view of the above facts the argument of learned counsel for the accused/appellant that at the time of committing the offence the accused was of unsound mind is based on no evidence.

31. On the question of awarding capital punishment to the accused, learned counsel for the accused/appellant placing reliance on a decision of Hon'ble Apex Court in the case of State of Punjab Vs. Gurmej Singh reported in 2002 (6) SCC 663 argued that this is not a case which falls within the category of rarest of rare case, therefore the capital punishment cannot be awarded in this case.

32. The learned Additional Sessions Judge has observed that this was a very heinous crime in which no leniency could be shown to the accused and the crime committed by the accused was so heinous in nature and shocked the conscious of the peace living and law abiding citizens that if the capital punishment is not warded it would be an injustice to the peace living and law abiding citizens.

33. The relevant law on the point is Section 354(3) of the Criminal Procedure Code which lays down that "when the conviction is for an offence punishable with death or, in the

alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence." This section has been interpreted by the Hon'ble Apex Court time and again in many cases and the general rule which has been laid down by the Hon'ble Apex Court is that 'life imprisonment' is rule and 'death penalty' is an exception i.e. the death penalty can be awarded in the exceptional cases only. The land mark judgment on this point is Bachan Singh Vs. State of Punjab reported in (1980) 2 SCC 684 in which Hon'ble Apex Court after considering all the aspects and constitutional validity of this provision laid down that (i) the extreme penalty of death should not be inflicted except in the gravest cases of extreme culpability (ii) before opting for the death penalty the circumstances of the 'offender' also required to be taken into consideration along with the circumstances of the 'crime. (iii) life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether insufficient punishment having regard to the relevant circumstances of the crime (iv) a balance sheet of the aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. Hon'ble Apex Court also referred to the aggravating circumstances in para-202 of the judgment and

mitigating circumstances in para-206 of the judgment. This judgment was again considered in the case of Machhi Singh and others Vs. State of Punjab, reported in (1983) 3 S.C.C. 470 in which the principle of rarest of rare case was again reiterated and it was held that the death sentence can only be inflicted in case where the murder was cold-blooded, calculated and gruesome multiple murders as a reprisal in a family feud and in which the collective conscience of the community is so shocked, that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community; when the murder is committed for a motive which evinces total depravity and meanness e.g. murder by hired assassin for money or reward, or cold blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust or murder is committed in the course of betrayal of the motherland; when murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath or in cases of bride burning or dowry deaths or when whose murder is committed is an innocent child or a helpless woman or old or infirm person.

34. Again in the case of Allauddin Mian and others Vs. State of Bihar reported in (1989) 3 SCC 5 Hon'ble Apex Court

considered Section 354(3) of Cr.P.C. and reiterated the principles laid down in earlier decisions and held that holding the reasons for award of the death sentence are mandatory. Sub-section (3) of Section 354 cast a heavy duty on the Court to explain its choice why such sentence is being awarded. The special reasons clause in that sub-section is a sufficient safeguard against arbitrary imposition of the extreme penalty and if the Court reached the conclusion that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose the lesser punishment. Only in those exceptional cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence.

35. This aspect was again considered by the Hon'ble Apex Court in the case of State through Superintendent of Police, CBI/SIT Vs. Nalini & others reported in 1999(5) SCC 253 and in the case of Om Prakash Vs. State of Haryana reported in 1999(3) SCC 19. In that case a member of a Para military force who has killed seven members of the family was not awarded extreme penalty for the reason that he had been labouring under the strain that he and the members of his family had been suffering due to injustice being meted out to them by the family of the deceased. It was considered to be mitigating circumstances in that case. In the case of State of Punjab Vs. Gurmej Singh (supra) Hon'ble Apex Court again held that before awarding the death penalty the

Court has to consider the motive of the crime, manner of the assault, the impact of the crime on the society as a whole, the personality of the accused, the circumstances and facts of the case as to whether the crime committed is for satisfying any kind of lust, greed or in pursuance of any organized anti-social activity or by way of organized crime, drug trafficking or the like or the chances of inflicting the society with a similar criminal act that is to say vulnerability of the members of the society at the hands of the accused in future or commission of murder which may be shocking to the conscience.

36. The sum and substance of the principles enumerated by the Hon'ble Apex Court extracted above, is that the death penalty can be awarded only in rarest of rare cases and in exceptional cases looking to the facts and circumstances of the particular case, examples of which have been cited in the above referred cases and where looking to the facts and circumstances of the case the awarding of the life imprisonment is inadequate based on the above law by the Hon'ble Apex Court.

37. Now we shall proceed to examine the present case whether it falls in the category of rarest of rare cases and an exceptional case.

38. The facts of this case are not disputed as has been mentioned in the earlier part of this judgment. The accused Ram Singh and Sanjhuram (P.W.2) are stepbrothers i.e. they are sons of Dharmsai and born to two wives. After the death of Dharm Sai the accused Ram Singh got the land mutated

in his name except leaving 50 decimals of land to the share of Sanjhu Ram and therefore Sanjhu Ram filed a revenue case in the Court of Tehsildar for correcting the record and getting his share. That made the accused Ram Singh infuriated and feeling harassed on account of that litigation he wanted to eliminate Sanjhu Ram who was the main target in the case. But unfortunately on the fateful day the accused first of all killed Shani Ram against whom he was carrying an impression that he was taking the side of Sanjhu Ram. Thereafter he reached the house of the Sanjhu Ram where he assaulted Sakhuri Bai and thereafter left for the agriculture field in search of Sanjhu Ram. Sanjhuram ran away and hid himself in the house of his maternal uncle Maya Ram. The accused reached there chasing Sanjhuran with the intention to assault Sanjhu Ram and he murdered Maya Ram under the impression that he was also taking the side of Sanjhu Ram.

39. Looking to the above facts and circumstances of the case it is apparent that the accused Ram Singh committed two heinous murders and assaulted Sakhuri Bai also, the mother of the P.W.2 Sanjhu Ram out of frustration. Therefore it cannot be considered that it is the rarest of rare cases or exceptional case so as to warrant the imposing of capital punishment. The whole motive behind the crime was the family dispute and these persons were unnecessarily murdered because the accused could not reach up to the main target. It is not a case in which the conscience of the society is shocked or preplanned or organized murders

were committed. In this case the decision of Om Prakash (supra) and State of Punjab Vs. Gurmej Singh (supra) squarely applies. In Om Prakash's case the accused was labouring under the strain that he and his family members had been suffering due to injustice being meted out to them by the family of the deceased and he killed seven members of that family. In the case of State of Punjab Vs. Gurmej Singh the accused was working in Dubai and was sending money to his brother deceased Jagjit Singh. When Jagjeet Singh had not given the genuine account of the money to Gurmej Singh, he killed his own brother, his wife Charanjit Kaur, their son Swaranjit Singh and three persons were injured. In that case the Court reached the conclusion that the case did not fall under exceptional case. This case is also similar and, therefore, we are of the opinion it is not a rarest of rare cases in view of the principles laid down by the Hon'ble Apex Court. Therefore the death sentence awarded by the learned Additional Sessions Judge to the accused/appellant Ram Singh cannot be confirmed for the reasons mentioned herein above.

40. In the result the convictions of the accused/appellant for the commission of the offences under section 302 and 307 of the Indian Penal Code are maintained. The sentence of death and payment of fine of Rs. 10,000/- imposed on him by the learned Additional Sessions Judge for the offence punishable under section 302 I.P.C. are set-aside. In its place, we sentence the accused-appellant to undergo imprisonment for life and pay a fine of Rs. 1000/- (Rupees

one thousand). In default of payment of fine amount to undergo 3 months S.I. We maintain the sentence imposed by the learned Additional Sessions Judge on the accused appellant for the offence punishable under section 307 of I.P.C.

41. Thus the appeal of the accused/appellant is partly allowed to the extent indicated above and the reference for confirmation of death sentence is rejected.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge